87-808 (3)

CASE NO.: _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

SANDRA SAPP FLETCHER, SYLVIA SAPP VANDERGRIFT AND JAMES WINSTON SAPP, JR.,

Petitioners,

vs.

ESTATE OF HELEN SAPP CHRIST,

Respondent.

ON WRIT OF CERTIORARI
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, FIRST DISTRICT

BRIEF FOR RESPONDENT

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STATEMENT OF THE CASE

Petitioner's statement of the case is so sketchy and so taken out of context as to be completely misleading. The facts of the case were accurately stated by the trial court in its final judgment entered on November 13, 1986 and set forth in full in petitioner's appendix (A). Respondent adopts the trial courts statement of facts as his statement of the case.

RESPONSE TO REASONS FOR GRANTING THE WRIT

There were only two issues ever involved in this case which were set forth by the trial court in its final judgment as follows (A4):

> "A. Whether testatrix did possess the minimum testamentary capacity in order for her will to be valid; and
>
> B. Whether Hugh Moreland, the principal beneficiary under the will, exerted undue influence on the testate in the execution of the will."

When one has been adjudicated mentally incompetent, there is a presumption that such condition continues. However, it is a rebutable presumption as it is a

question of fact. Chapman vs. Campbell (Fla. 2nd DCA 1960) 119 So. 2nd 61. Murrey vs. Barnett National Bank (Fla. 1954) 74 So. 2nd 647.

John Shaw Curry, the attorney who drafted Helen Christ's will, knowing of her incompetency, contacted her treating physician, Dr. Hilliard R. Reddick about her lucidity and requested Dr. Reddick to contact him at a time when he felt Mrs. Christ was particularly lucid so he could arrange to have the will which he was drawing to be again explained to her and executed if it appeared she wanted to do so. Record (R), (R-66). After several weeks, Dr. Reddick contacted Mr. Curry with the information that Mrs. Christ appeared to be fully cognizant and arrangements were

made for Mr. Curry to meet Mrs. Christ with Dr. Reddick at the Gadsden Nursing Home (A 11). Dr. Reddick, who was deceased at the time of trial, had given a deposition during his lifetime which was published at the trial. He was very positive in his conclusions that Mrs. Christ knew the extent of her property and the identity of her relatives and that she was firm in her desire to bequeath her property as she did. (A 19). Dr. Reddick had been Mrs. Christ's treating physician from July 12, 1976 until August 31, 1981. He had been seeing Mrs. Christ on at least monthly intervals, if not more often, since she had been in the nursing home. He was a member of the American Board of Family Practice and his specialties were

family practice, internal medicine, pediatrics, obstetrics, gynecology, general surgery and psychiatry. Deposition (D-5). Dr. Reddick was a subscribing witness to Mrs. Christ's will. Margaret Suber, a Licensed Practical Nurse in the nursing home was also a subscribing witness to the will and testified that Mrs. Christ appeared to understand what was going on and to understand the terms of her will and made intelligent responses about questions directed to her about the will and that she was having a very good day on the day that the will was signed. (R-13) (A-14).

John Shaw Curry, who was also present at the time of the signing of the will, testified that he was never in doubt that Mrs. Christ was fully lucid, aware of the extent of

her property and the terms incorporated in the will fully comported with her wishes. (A-13) (R-70).

Also testifying at the trial was Samuel A. Thompson, the administrator of the Gadsden Nursing Home at the time Mrs. Christ signed the will. He stated he knew Mrs. Christ as a patient, that she was friendly, but sometimes became upset, but always appeared to be aware of her surroundings and was positive in expressing her wants. He stated in all his contacts, she seemed to be lucid. (A-14). It is significant that not one single witness nor one shred of evidence was proferred at the trial to show that Mrs. Christ was not competent at the time of the execution of her will.

The trial court held:

"25. The court is of the view that the greater weight of the evidence establishes that at the time Mrs. Christ executed the will offered for probate in this case she was 'of sound mind' under our probate statute in that she had the ability to 'mentally understand in a general way, the nature and extent of the property to be disposed of'....and of her 'relation to those who would naturally claim a substantial benefit from the will, as well as a general understanding of the practical effect of the will as executed... Such were the standards set forth in Skelton vs. Davis, Fla. App. 1961, 133 So. 2nd 432, which also observed that the making of a will does not depend on a 'sound' body, but a 'sound' mind. The care and steps taken by Mr. Curry and Dr. Reddick to inquire into Mrs. Christ's lucidity and understanding as a prelude to the formal execution of her will are, along with other evidence,

> convincing of the existence of her testimentary capacity. Wills, especially those of older persons, should be upheld if possible. Here the court finds abundant support for sustaining the will as against a challenge to the testamentary capacity of the testatrix." (A-27).

As to whether Hugh Moreland, the principal beneficiary under the will, exerted undue influence on the testatrix and the execution of the will, again it is significant that no testimony or proof was proferred at the trial that Mr. Moreland in any way attempted to influence Mrs. Christ in the execution or the procurement of her will. The trial court held:

> "...it is not established that he in any way hinted or suggest-

ed or performed any artful or fraudulent contrivence that he be the principal beneficiary or the personal representative. Referring to the criteria of In re Estate of Carpenter, (Fla. 1971) 253 So. 2nd 697, it clearly is evidenced that he was not present at the execution of the will; there is no evidence that he knew the contents of the will until after Mrs. Christ's death; and the safekeeping of the will was not by him, but by the attorney, Mr. Curry..."(A-37).

The court further held:

"30. It is concluded that the evidence is persuasive by its greater weight that neither Mr. Moreland nor his mother in his behalf were ever engaged in active procurement of the terms of the will executed by Mrs. Christ. The evidence falls short of revealing a con-

> niving scheme, over-persuasion or any fraudulent contrivence on the part of the Morelands to capture the favored beneficiary role which was incorporated into the will." (A-39)

The thrust of petitioner's argument seems to be that the trial court misweighed the evidence. The foregoing quotations of testimony demonstrate that there was ample, competent testimony to support the trial court's finding of competency and to rebut any presumption of incompetency resulting from her prior adjudication of incompetency. In Ahlman vs. Wolf (3rd DCA, 1986) 483 So. 2nd 889, the court emphasized the futility of appealing

undue influence decisions solely on the basis that the trial court misweighed the evidence. It held that the evaluation of conflicting evidence is the function of the trial court. It is the trial court, as trier of fact, that must weigh the evidence, assess the credibility of the witnesses and determine whether the evidence establishes the occurence of undue influence. In Zeller vs. Zelnick, (4th DCA, 1985) 476 So. 2nd 299, the court emphasizes the point that the burden of proof in a will contest remains for the party challenging the will throughout the case, regardless of whether the Carpenter (supra) presumption is established, and citing In re Estate of Davis

(4th DCA 1984) 42 So. 2nd 12.

Petitioner cites Sears, Roebuck & Co. vs. Stansbury, 374 So. 2nd 1051 (Fla. 5th DCA 1979) as supporting the proposition that the law irrebutably presumes that confidences between a client and attorney were passed by the lawyer to other clients of the lawyer. This position is stated on page 16 of petitioner's petition and again is used to support his arguments on pages 18 and 22 of his petition. Such a statement is preposterous on its face and there is no way with even the most strained construction of SEARS that such a conclusion could be reached. The actual holding of SEARS was in the following

language:

> "The existence of the attorney-client relationship raises an irrefutable presumption that confidences were disclosed (by client to attorney)...Further, the presumed access of a partner to confidential information imputes knowledge of that information to others in his firm."

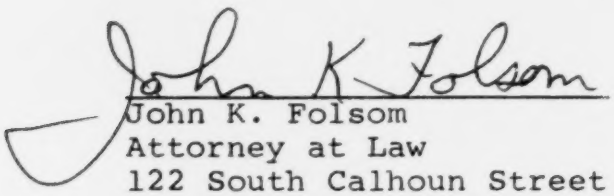
Petitioners' misstatement of the holding in Sears was pointed out by respondent in his answer brief filed in the First District Court of Appeals in the State of Florida and was again pointed out by respondent in his response to petitioner's motion for rehearing and for rehearing en banc, when petitioner for the second time misstated such holding. For peti-

tioner now to knowingly and willfully misstate to this court the holding in that case after the misstatement had twice been brought to his attention, and base most of his premise in his brief on that misstatement is mind boggling!

CONCLUSION

There simply is no federal question of law presented by petitioners petition for Writ of Certiorari under the 14th ammendment or otherwise. The law of testamentary capacity and undue influence is well settled and correctly applied. There was no conflict of facts. Petitioners simply express discontent at the trial court's weighing of the evidence which not only is not a federal question but not an appealable question.

Respectfully submitted,



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